SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 227.

JAMES BRYAR, Jr., EMMA S. BRYAR, SAMUEL B. BRYAR, EDWARD S. BRYAR, JESSIE H. BRYAR, HATTIE S. BRYAR, AND SUSAN BRYAR, HEIRS-AT-LAW OF JAMES BRYAR, DECEASED, APPELLANTS,

vs.

THOMAS CAMPBELL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED MARCH 9, 1903.

(17,317.)

(17,317.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 227.

JAMES BRYAR, JR., EMMA S. BRYAR, SAMUEL B. BRYAR, EDWARD S. BRYAR, JENNIE H. BRYAR, HATTIE S. BRYAR, AND SUSAN BRYAR, HEIRS-AT-LAW OF JANE BRYAR, DECEASED, APPELLANTS,

vs.

THOMAS CAMPBELL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from the circuit court of the United States for the western district of Pennsylvania	2	1
Docket entries	2	1
Transcript on appeal from district court	4	2
Docket entries	4	2
Decree	5	3
Bill of complaint	6	3
Affidavit of James Bryar	8	5
Eliza B. McElroy	9	5
Jane Bryar	10	6
Order to answer	11	7
Answer of Robert Arthurs	11	7
Replication	12	8
Order allowing Thomas Campbell to intervene	13	8
Amended prayer	13	8

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 1, 1899.

	Original.	Print.
Evidence for complainant	14	9
Testimony of Samuel B. McElroy	14	9
Mrs. Jane Bryar	15	10
Eliza B. McElroy	17	11
Thos. J. Keenan	18	12
James Bryar, Jr	19	12
Evidence for defendant	20	13
Testimony of Jane Bryar	20	13
James Bryar	26	17
Thos. Campbell	34	22
Decree	41	26
Appeal to United States circuit court	42	27
Agreement as to record on appeal	43	28
Clerk's certificate	43	28
Motion and proposed order declaring appeal deserted	43	28
Notice of motion to declare appeal deserted	44	29
Answer of Thomas Campbell to motion to declare appeal deserted	44	29
Order denying motion to dismiss appeal	46	30
Order substituting plaintiffs	46	30
Petition to revoke order of January 28, 1896	46	30
Further testimony on part of Thos. Campbell	48	32
Docket entries in case of James *vs.* Bryar	50	33
Opinion of Acheson, J	51	34
Decree	53	35
Petition for appeal	53	35
Rule to show cause why appeal should not be granted	54	35
Order granting appeal	54	36
Assignment of errors	54	36
Bond on appeal	55	37
Citation and service	56	37
Clerk's certificate	56½	38
Hearing and submission	57	38
Opinion	57½	39
Decree	59	40
Petition for appeal	60	40
Allowance of appeal	63	42
Assignment of errors	64	42
Bond on appeal	67	44
Citation (copy)	69	44
Clerk's certificate	70	45

1 In the United States Circuit Court of Appeals for the Third Circuit.

Be it remembered that on the ninth day of March, in the year of our Lord one thousand eight hundred and ninety-eight, L. C. Barton, Esquire, of counsel for appellant-, appeared in court and files a transcript of record, pursuant to an appeal, in the case of James Bryar, Jr., Emma S. Bryar, Samuel B. Bryar, Edward S. Bryar, Jennie H. Bryar, Hattie S. Bryar, and Susan Bryar, heirs-at-law of Jane Bryar, deceased, as appellants, *vs.* Thomas Campbell, as appellee, which, being read, is in the words and figures following, to wit:

2 In the United States Circuit Court of Appeals, Third Circuit.

JAMES BRYAR, JR., ET AL., Heirs-at-law of Jane Bryar, Deceased, Appellants,
versus
THOMAS CAMPBELL, Appellee.
} No. —, March Term, 1898.

Docket Entries.

Among the rolls, records and judicial proceedings in the circuit court of the United States for the western district of Pennsylvania, at No. 30, November term, 1879, may be found the following words and figures, to wit:

JANE BRYAR, by Her Next Friend, ROBERT BRYAR, Appellee,
vs.
JAMES BRYAR, ROBERT ARTHUR, Assignee, and THOMAS CAMPBELL, Respondents Below, Appellants.

Appeal from decree of U. S. district court for the western district of Pennsylvania. Petition for appeal, allowance of appeal, copy of docket entries, and bond for costs filed August 30, 1879.

1895, Dec. 20.—Præcipe for appearance of L. C. Barton, Esq., for appellee, filed.

1896, Jan'y 28.—Aff't for order substituting heirs-at-law as plaintiff filed and order allowed. Same day motion for an order de-
3 claring appeal deserted and decree affirming decree of district court. Notice of motion to dismiss appeal filed. Same day appellant-' answer filed. Same day order refusing motion to dismiss appeal filed.

1896, Jan. 29.—Petition to revoke portion of order of Jan. 28, 1896, filed.

1896, Feb'y 15.—Service of notice of petition of Jan. 29, 1896.

1896, March 7.—Testimony filed.

1896, Nov. 27.—Case argued. *C. a. v.*

And now, 28th January, 1897, it is stipulated and agreed between counsel, as follows:

That substitution of the heirs of Jane Bryar, deceased, of January

27th, 1896, be taken and considered as regularly filed as a bill of reviver in this case.

And that the answer of Thomas Campbell, filed 28th January, 1896, be taken as a cross-bill.

It is further agreed that the case shall be heard upon the record now before the court. Above agreement filed by leave of court.

1897, Feb'y 5.—Opinion of the court filed with decree as follows: This cause having come on for final hearing upon the proofs, pleadings and written stipulation, was argued by counsel; and now on Feb'y 5, 1897, upon consideration, the decree of the district court is reversed—the costs in that court, however, to be paid by Thomas Campbell; and it is further ordered, adjudged and decreed that the bill of complaint be and the same is dismissed without costs in this court.

BY THE COURT.

1897, Aug. 5.—Assignment of error filed.

And now, August 9th, 1897, a rule is granted upon the defendants to show cause why the appeal prayed for should not be allowed as of August 5th, 1897.

M. W. ACHESON,
Circuit Judge.

1898, Feb'y 8th.—Rule to show cause why appeal should
4 not be allowed made absolute, and appeal allowed as of August 5, 1897. Order filed.

1898, Feb'y 8th.—Citation awarded and returnable March 9th, 1898.

1898, Feb'y 26th.—Citation served upon W. B. Rodgers, Esq.

Docket Entries in U. S. District Court.

JANE BRYAR, by Her Next Friend, ROBERT BRYAR,
vs.
JAMES BRYAR and ROBERT ARTHURS, Pittsburgh.

May 5, 1877.—Bill in equity and affidavit in support thereof filed, the said bill being filed *nunc pro tunc* as of 30th day of April, 1877, the day on which it was presented and argued by Mr. McCord for and Mr. Arthurs against the same and further argument continued until the 5th proximo.

May 5, 1877.—Further argument by Mr. McCord and Mr. Arthurs. *C. a. v.*

Jan. 29, 1878.—Defendants ordered to file answer to said bill before the first of March next, otherwise bill to be taken *pro confesso.*

Feb. 1, 1878.—Copy of order returned "Service accepted."

March 1, 1878.—Answer filed.

March 6, 1878.—Replication filed.

April 20, 1878.—Petition filed, and on motion S. C. McCandless appointed commissioner to take the testimony and make report.

August 15, 1878.—On motion, Thos. Campbell, purchaser, allowed to intervene and make defense.

May 3, 1879.—Petition filed and order granted on James Bryar, Robert Arthurs and Thos. Campbell to close their testimony in thirty days.

June 21, 1879.—Testimony taken before special commissioner filed.

June 25, 1879.—Bill, answer and proofs, argued by Messrs. McCord and Sutton for plaintiff and W. B. Rogers, Esq., for Thos. Campbell. *C. a. v.*

June 26, 1879.—Decree for plaintiff for land described in bill, each party to pay his or her own costs.

5 *Decree.*

This cause came on to be heard on the pleadings and evidence and was argued by counsel for defendants as well as for complainant, and thereupon and upon consideration thereof, the court doth adjudge and declare Jane Bryar to be the equitable owner of the land in suit, and that Thos. Campbell received a conveyance thereof and does now hold the same with notice of and subject to the rights of Jane Bryar therein, and it is ordered and decreed that the said Thos. Campbell do by good and sufficient deed or deeds convey to Jane Bryar or to whom she shall appoint the one undivided half part of that tract of land situate in the 21st ward of the city of Pittsburgh, bounded and described as follows, beginning at a wild-cherry tree, thence north fifteen and three quarters degrees east (N. 15¾ E.) twenty-nine perches (29 p.) to a post, thence south seventy-seven and one-half degrees east (S. 77½ E.) twenty-five and two-tenths perches to a post ($25\frac{2}{10}$ p.) thence south four degrees west (S. 4 W.) forty-nine and four-tenths perches ($49\frac{4}{10}$ p.) to a post, thence north forty-seven degrees west (N. 47 W.) thirty-nine and three-tenth-perches ($39\frac{3}{10}$ p.) to the place of beginning, free from all incumbrances done by him or any person or persons claiming by, from or under him, and do account with the said Jane Bryar for all the rents and profits which the said Thomas Campbell has or might without wilful default have received from said land, less a just allowance for taxes and repairs on same and that each party do pay his or her own costs incurred in this proceeding. June 30, 1879, bond for costs on appeal to circuit court filed. July 16, 1879, appeal to circuit court allowed and filed. Dec. 19, 1881, received of Thos. Campbell, respondent, the sum of $28.40 costs, taxed against him as per said decree. June 12, 1896, agreement of counsel to use original record on appeal filed.

6 *Complainant's Bill.*

To the Honorable W. W. Ketcham, judge of said court:

Your orator complains and says:

1st. That Jane Bryar, the complainant in this bill is the owner of an undivided one-half part of a tract of land situate in the 21st ward of the city of Pittsburgh, county of Allegheny and State of Pennsylvania, (formerly Collins township), and bounded and described as

follows, to, wit: Beginning at a wild-cherry tree, thence north fifteen and three-fourths degrees, east twenty-nine perches to a post, (N. $15\frac{3}{4}°$ E. 29 p.); thence south seventy-seven and one-half degrees, east twenty-five and two-tenths perches to a post, (S. $77\frac{1}{2}°$ E. $25\frac{2}{10}$ p.); thence south four degrees, west forty-nine and four-tenths perches to a post (S. 4° W. $49\frac{4}{10}$ p.); thence north forty-seven degrees, west thirty nine and three-tenths perches to the place of beginning (N. 47° W. $39\frac{3}{10}$ p.), containing seven acres (7 a.) strict measure.

2d. That the deed for said property was through mistake or other cause made in the name of James Bryar, one of the defendants herein, instead of to Jane Bryar, the plaintiff herein, who was entitled to the possession and control of said property, she having paid the purchase-money with her own individual funds.

3d. That James Bryar, one of the defendants herein, was, on the 8th day of January, A. D. 1877, decreed and adjudged a bankrupt upon the petition of his creditors, and Robert Arthurs was on the 8th day of February, 1877, chosen assignee of his estate, by the creditors at a meeting called for that purpose, and the register in bankruptcy by virtue of the authority vested in him by his deed of assignment bearing date the — day of ——, 1877, conveyed to said assignee all the property of whatsoever kind, real, personal and mixed, of which the said James Bryar was seized at the time of his adjudication in bankruptcy, including the above-described undivided one-half of said property.

7 4th. That the said Robert Arthurs, as such assignee, has taken possession of this complainant's said property, and is now proceeding to have the same subdivided and sold in parcels; by means whereof complainant's title to said property will be seriously embarrassed by disinterested purchasers or otherwise, when in fact said assignee has no just legal claim whatever to her said lands.

Wherefore complainant prays:

1st. That the said Robert Arthurs, assignee, as aforesaid be restrained from exercising jurisdiction or control over her said land, from partitioning the same or offering it for sale.

2d. That a preliminary injunction be issued against him, the said assignee, until this case can be heard.

3d. That the said James Bryar and the said Robert Arthurs, assignee, be separately required to answer this bill, and state the fact as to how they acquired title, and if it was not by mistake when the title ought to have been made to complainant. If said Bryar claim said lands, may he be required to show in what manner he paid for them, and to whom, and that your honor on the final hearing, will grant such other and further relief as according to the proceedings in chancery and good conscience said complainant may be entitled. And she will ever pray.

JANE BRYAR.

C. W. McCORD,
Attorney for Complainant.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Jane Bryar, the complainant in this bill, being duly sworn, say-that the statements made therein are true as she verily believes.

JANE BRYAR.

Sworn and subscribed before me this 28th day of April, A. D. 1877.

S. C. McCANDLESS,
Clerk U. S. District Court.

8 *Affidavit.*

James Bryar, being duly sworn, says that he is the husband of Jane Bryar, the plaintiff in this bill and one of the defendants therein; that he was married in June, 1852, that his wife Jane McElroy, was a daughter of James McElroy, dec'd. That in 1856 affiant and S. B. McElroy his brother-in-law bought the interest of John McElroy in the estate of his father, James McElroy, dec'd, being seven acres, strict measure, in what is now the 21st ward of the city of Pittsburg, on which I have lived since the fall of 1857, that the deed from John McElroy to myself and S. B. McElroy bears date June 10th, 1856, and is recorded in the recorder's office of Allegheny county, in Deed Book, vol. 164, page 186, and that the said S. B. McElroy and myself held said seven acres as tenants in common, that some time in 1863, S. B. McElroy proposed to convey to my wife Jane Bryar, his undivided half interest in said seven acres held by him and myself as tenants in common as aforesaid in consideration of her surrender of a certain note held by her before marriage, drawn to the order of S. B. McElroy by Eliza B. McElroy and assigned by said S. B. McElroy to Jane McElroy, afterwards my wife, that she surrendered said note to the said S. B. McElroy who made a conveyance of his interest in said land to me, that the deed for said interest was made in my name, through some mistake, as she was entitled to have the title to said property in her name, she having paid all the purchase-money that was paid when she surrendered said note, that said deed was not made in my name through any request of mine, that the correcting of said mistake was neglected after it was discovered and said correction was never made. I was also the owner of a tract of land adjoining the said described seven acres, containing about eleven acres more or less.

JAMES BRYAR.

Sworn and subscribed before me this 4th day of May, A. D. 1877.

S. C. McCANDLESS,
Clerk U. S. District Court.

9 *Affidavit.*

Eliza B. McElroy, being duly sworn, says that she is a sister of the complainant in this bill; that she was also a daughter and heir of James McElroy, who died intestate on or about the 1st day of De-

cember, A. D. 1836, possessed of considerable real estate in the city of Pittsburgh and also in Peebles township, and leaving heirs as follows: Eliza B. McElroy, Mary McElroy, S. B. McElroy, Jane McElroy, Susan McElroy, John McElroy and James McElroy. That a partition of the property of said decedent was made at No. 46, June term, 1850, at which said partition the property was divided into five parts, each of the heirs to take property except Jane McElroy and Susan McElroy, who were to receive in lieu of property the sum of $2,500.00 in money, as by reference to said proceedings will appear. That S. B. McElroy in consideration of the value of the purpart chosen by him was to pay to Jane McElroy her share in money, to wit, the sum of $2,500.00. That affiant became indebted to S. B. McElroy, her brother, for the price of certain repairs made by him upon property taken by her at the partition and gave to him her certain promissory note bearing date the 18th day of March, 1852, for the sum of $1,576.61, a copy of which said note is hereto attached and made a part of this affidavit; that said S. B. McElroy assigned said note to Jane McElroy by assignment dated the 23d day of March, 1852; that afterwards, to wit, some time during the month of March, 1863, affiant being unable to pay the note held by her sister, Jane Bryar, as aforesaid (formerly McElroy), S. B. McElroy agreed to lift and pay said note as a matter of accommodation to affiant, and that on the 18th day of March, 1863, her brother, S. B. McElroy, sent her a letter enclosing said note and informing her that the matter was settled and the note paid.

ELIZA B. McELROY.

Sworn and subscribed before me this 3d day of May, A. D. 1877.

S. C. McCANDLESS,
Clerk U. S. District Court.

10 PITTSBURGH, *March* 18, 1852.

On demand I promise to pay to S. B. McElroy or order fifteen hundred and seventy-six — and sixty-one cents for value received, with interest from date.

$1,576.61. ELIZA B. McELROY.

Endorsed: March 23, 1852, for value received I assign the within to Jane H. McElroy. S. B. McElroy.

Affidavit.

Jane Bryar, being duly sworn, says that she was a daughter and heir of James McElroy, who died intestate about the 1st of December, 1836; that at the partition of her said father's estate at No. 46 of June term, 1850, she was to get money for share in said estate and not property; that her brother, S. B. McElroy, assumed the payment to her of her share and for that purpose assigned to her a note held by him from Eliza B. McElroy, dated March 18, 1852, for $1,576.61, by an assignment on the back of said note bearing date

the 23d day of March, 1852; that in the June following she was married to James Bryar, her present husband and one of the defendants in this bill; that she held said note till some time in March, 1863, at which time S. B. McElroy proposed to convey to her the undivided one-half of a piece of property containing seven acres, on which they then lived, if she would surrender to him the note hereinbefore described; that she did surrender said note and as she supposed had a deed made to her by her brother, which said deed was put on record; that her husband attended to the business in making said bargain and taking said conveyance; that she did not know at the time that said deed was not in her name and for some time afterward; that she has been in possession of said property ever since; that said property was a part of her father's estate, and that she never gave her consent either to convey or en-
11 cumber said property, and that she believes it was a mistake that said title was not made to her instead of to her husband.

JANE BRYAR.

Sworn to and subscribed before me this 3d day of May, A. D. 1877.

S. C. McCANDLESS,
Clerk U. S. District Court.

Order of Court.

And now, to wit, January 29, 1878, on motion of C. W. McCord, Allegheny, for complainant above named, the court grant an order on respondents James Bryar and Rob't Arthurs to answer the bill filed in this case according to the prayer of said complainant in said bill on or before March 1, 1878, otherwise said bill will be taken *pro confesso.*

PER CURIAM.

Answer.

To the Honorable W. W. Ketcham, judge of said court:

The defendant, Robert Arthurs, comes and for answer to the plaintiff's bill filed in the above-entitled case says:

1. He is not informed and is unable to state whether the allegations contained in the first and second paragraphs of the plaintiff's bill are true or false. He does not admit that the said allegations are true and asks that the plaintiff may be required to prove the same.

2. The allegations contained in the third paragraph of plaintiff's bill are true.

3. In answer to the first clause of the fourth paragraph of the plaintiff's bill, he says, that under the direction of your honorable court, he has been endeavoring to sell the property of the bankrupt, conveyed to him by the register of bankruptcy, and unless otherwise ordered by your honorable court, he intends to sell the same. He

is not informed and is unable to state whether the allegations
12 contained in the remainder of said paragraph are true or false; but he does not admit that they are true and asks that the plaintiff may be required to prove the same.

ROBERT ARTHURS,
Assignee of Jas. Bryar.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Robert Arthurs, above named, being duly sworn, says the facts stated in the foregoing answer are true as he verily believes.

ROB'T ARTHURS.

Sworn to and subscribed this 1st day of March, A. D. 1878.

S. C. McCANDLESS, *Clerk.*

Replication.

The replication of Mrs. Jane Bryar, complainant, to the answer of Rob't Arthurs, respondent.

This repliant saving and reserving unto herself now and at all times hereafter, all and every manner of benefit and advantage of exception which may be had or taken, to the manifold insufficienc es of said answer for replication thereunto says: that she will aver, maintain and prove her said bill of complaint to be true, certain and sufficient in law to be answered unto and that the said answer of the said defendant is uncertain and insufficient to be replied unto by repliant.

All which matters and things this repliant is and will be ready to aver, maintain and prove, as this honorable court shall direct and humbly pray as in and by *their* said bill *they* have already prayed.

C. W. McCORD,
Solicitor for Complainant.

13 *Order Allowing Thomas Campbell to Intervene.*

And now 15th August, 1878, on motion of Rodgers & Oliver, attorneys for Thos. Campbell, the purchaser at assignee's sale of the property referred to in the bill and a lien creditor of said James Bryar, the said Thomas Campbell is allowed to intervene and make defense to the bill.

PER CURIAM.

Amended Prayer.

And now, to wit, June 1879, complainant granted leave to amend the prayer of the bill by adding thereto—

"That upon final hearing of this cause, the court may order, decree and require the defendants to make, execute and deliver to complainant good and sufficient deed or deeds for the one undivided half of all that tract or parcel of land situate in the 21st

ward of the city of Pittsburg, county of Allegheny, State of Pennsylvania, bounded and described as follows: Beginning at a wild-cherry tree, thence north fifteen and three-fourths degrees east twenty-nine perches to a post (N. $15\frac{3}{4}°$ E. 29 p.), thence south seventy-seven and one-half degrees east twenty-five and two-tenths perches to a post (S. $77\frac{1}{2}°$ E. $25\frac{2}{10}$ p.), thence south four degrees west forty-nine and four-tenths perches to a post (S. 4° W. $49\frac{4}{10}$ p.), thence north forty-seven degrees west thirty-nine and three-tenths perches to the place of beginning (N. 47° $39\frac{3}{10}$ p.), containing seven acres strict measure (7 a.), being the same tract of land described in paragraph one (1) of bill."

14 *Deposition of Witnesses*

Taken before S. C. McCandless, commissioner appointed for that purpose, this 23d day of April, 1878, at 10 a. m., pursuant to notice given by C. W. McCord, Esq., attorney for complainant, and at his request, at the clerk's office of said court, in U. S. building.

Present, Mr. McCord, who states that he notified all the attorneys of all the parties in interest of the time and place fixed for the taking of said testimony, at least as far as he knew of said parties.

SAMUEL B. MCELROY being sworn and examined by Mr. McCord, says:

I am a brother of Mrs. Jane Bryar, the complainant. On the division of my father's estate I became indebted to Mrs. Jane M. Bryar about the year 1850, for the full amount of her interest therein, which, I think, amounted to in the neighborhood of twenty-five hundred dollars. My sister, Eliza McElroy, improved a piece of property which I advanced her the money to do, and on the settlement with her, on the 18th of March, 1852, she owed me $1,576 61, for which I took her note of that date, and assigned it to Jane McElroy, my sister, on the 23d March, 1852, in part payment of the account that I owed her.

The note attached to complainant's affidavit (of Mrs. Jane Bryar), filed May 5, 1877, handed witness, who says that is the original note.

In March, 1863, I paid this note by transferring my interest in the property bought by James Bryar and myself from my brother John M. McElroy, which property was his (my brother's) interest in my father's estate, consisting of about seven acres of land, then situated in Collins township, Allegheny county, Pennsylvania, but now in the 21st ward of the city of Pittsburg. Mr. Bryar and myself bought this interest of John M. McElroy, June, 1856. We never divided it. We held it as tenants in common up until I made a deed in 1863—some time in March, 1863.

15 James Bryar, spoken of, was, and still is, the husband of my sister Jane.

The consideration which I received was the surrendering of this note by Mrs. Jane Bryar. I considered myself liable on this note

and wanted to see it paid. Mrs. Bryar agreed to take this property and surrender this note.

My impression was that the deed was made to Jane Bryar. I think so still. I always regarded that piece of property as hers. He, James Bryar, had no interest in any way in that property conveyed by me to my sister Jane.

I don't believe the deed was made to James Bryar. The more I think about it the more fully I am convinced that it was made to Jane Bryar. The deed was brought to me when busily engaged in my business, but still I don't think that I would have signed it had I discovered that it was made to James Bryar—I certainly would not have done so without first consulting my sister Jane.

S. B. McELROY.

THURSDAY, *May* 16, 1878.

Charles W. McCord, Esq., attorney for complainant, appears and states to the commissioner that he notified all parties in interest that he would appear before the commissioner on the said day at one o'clock in the afternoon to continue the examination of witnesses.

Mrs. JANE BRYAR, being sworn says: I am the complainant in this case. I am about 45 years of age. I am the wife of James Bryar. I was married in 1852. My name, prior to marriage, was Jane McElroy. I am the daughter of James McElroy, who died in 1836. My father, at the time of his death, owned real estate. There were seven heirs—three boys and four girls. After my father's death—I think in 1850—there was a partition of his estate. I was to get for my share of the real estate the sum of $2,500.00 in lieu of my share. Under the partition, my brother Samuel McElroy, was to pay me that sum. My brother Samuel paid me a portion of that sum soon after that partition in cash. As payment
16 of the balance he assigned to me a note of Eliza B. McElroy for $1,576.61.

Note attached to complainant's affidavit filed in this case handed witness, who says:

That is the note assigned to me. That note, when paid, was to be in full satisfaction of my interest in my father's estate. Neither Eliza B. McElroy, the maker of the note, nor Samuel McElroy, the assignor of the note, ever paid me the amount of that note in cash.

In 1856 my brother Samuel and my husband bought the seven acres from John McElroy, another brother. We (my husband and self) moved on it. In 1863 my brother Samuel came to me, and asked me if I was willing to give that note for the undivided interest in that seven acres. I considered the matter and concluded to do it. Then, soon after, I gave the note to my husband, and he took it for the purpose of arranging the matter and getting the deed. There was nothing said about whose name the deed would be made in. I thought it would be made out in my name. I did not know at the time that the deed was not made in my name, and did not know that until some time afterwards. I have been living on the property

ever since. After I had discovered that the deed had not been made out in my name, but in the name of James Bryar, my husband, I repeatedly called his attention to the matter, and asked him to have it corrected, and he would reply that it was perfectly safe. This matter was talked over and these requests made long before the proceedings in bankruptcy in the United States courts. Mr. Bryar, my husband, never paid any money, to my knowledge, for this property. The agreement for the surrendering of the note and the transfer of the property was made entirely between myself and my brother Samuel. I was never consulted, and never knew of any mortgages or other incumbrance being put upon this property. If it was so incumbered, it was done without my knowledge or consent.

17 At the time this transfer was made my husband owned real estate adjoining this seven acre tract, and also some other lots. The tract adjoining the seven acres contained about eleven acres.

JANE BRYAR.

Adjourned until Tuesday, the 21st May, 1878, at 2 p. m.

TUESDAY, *May* 21, 1878.

Met pursuant to the foregoing adjournment.

Present: Charles W. McCord, Esq., attorney for the plaintiff.

ELIZA B. MCELROY being called, sworn and examined, says:

I am a sister of Mrs. Jane Bryar, the complainant, and a daughter of James McElroy—the oldest daughter of James McElroy, who died in 1836. My father at his death was possessed of certain real estate. He left seven heirs, as follows: Myself, Eliza B. McElroy, Mary McElroy, S. B. McElroy, Jane McElroy, Susan McElroy, John McElroy and James McElroy. The property was divided in the orphans' court. My father did not make a will. I think the property was divided about 1850. The real estate was divided into five parts. Jane and Susan—Mrs. Bryar and Mrs. Torrence—were to get their share in money. S. B. McElroy was to pay Mrs. Bryar about $2,500 for her share, and my sister Mary was to pay Susan about the same amount for her share. Brother Samuel advanced me money to improve my share of the property. I gave him a note for this money which he advanced me.

Affidavit of Mrs. Jane Bryar handed witness, who says:

The note attached is the note I gave my brother Samuel. He transferred the note to Mrs. Jane Bryar, my sister, and notified me that I had to pay her instead of him (Samuel). It was some time in '52 that he notified me. I didn't pay the note, being unable,

18 but Samuel agreed to lift it for me. It was in '63 that he agreed to lift it for me. He lifted it for me, and sent it to me. He sent a letter along with it.

Affidavit of Mrs. Jane Bryar handed witness.

The note attached is the note I received from Samuel, and the letter attached is the same that I received from him at the same time with the note.

I was not present when the negotiations were going on between Samuel McElroy and Mrs. Bryar concerning the transfer of that property. All I know as to the payment of the note is hearsay.

ELIZA B. McELROY.

Adjourned until Tuesday, the 28th day of May, 1878, at 1 p. m.

TUESDAY, *May* 28, 1878.

Met pursuant to the foregoing adjournment.

Charles W. McCord, Esq., attorney for complainants, appears and states that he gave notice of this hearing to all parties in interest.

THOMAS J. KEENAN Esq., called, sworn and examined. He says:

I am an attorney. I superintended the making of the schedules in bankruptcy of James Bryar, a bankrupt in the district court of the United States. I was only assisted in the clerical part of the work. I was the only attorney engaged in the case. The making out of the schedules occupied, I should think, a couple of days or more, during which time James Bryar, the bankrupt, may have been in and out of the office several times—for a short period of time, but I am not absolutely certain that he was in the office at all while the papers were being prepared. After they were prepared, I took the papers out to his house one evening for him to sign them. James Bryar, Jr., son of James Bryar, bankrupt, was present during the time I was preparing the papers, and from him I got much of the information necessary to make out the papers. I also got information from deeds, and from an abstract of title made by Cozad,
19 Thompson & Co., abstractors of titles. James Bryar, Jr., acted as clerk in writing up the schedules when I took the papers to Mr. Bryar's house, I read and explained the same to him, and he signed them—the several sheets in their order. I did not get any of the information necessary to making out the papers from James Bryar, the bankrupt, or at least not that I can recollect. At the time Mr. Bryar was sick. The papers were made out by order of court. While making them out Mr. Bryar was sick, and I had no opportunity to see and consult with him, or at least very little opportunity. On the evening when I called to have him sign the papers he was indisposed, and took but little time to make an examination of them. At the time of making out the schedules, I think the deed for the property in the 21st ward, Pittsburgh, was not before me. I did not examine the title to see how or why the property stood in his name.

THOS. J. KEENAN.

JAMES BRYAR, JR., being called, sworn and examined says:

I am a son of James Bryar, the bankrupt alluded to. I was present with Mr. Keenan at the time of the making out of the schedules in bankruptcy. I believe I furnished him with most of the information concerning the real estate. The remainder of it was furnished from deeds and other papers—a list of mortgages.

At the time of making out the schedules, we did not have before us the deed for the seven acres of land situated in the 21st ward, Pittsburgh, nor for the eleven acres adjoining it. I furnished Keenan with the information concerning the seven and eleven acre tracts. There had been some sold off, and I gave it to him as containing seventeen acres, and gave a very general description of it, as being situated on Frankstown avenue. My father was not present in the office while we were making out the schedules as to this seventeen-acre tract. I was not at all acquainted with the way in which my father came into possession of the seven-acre tract. I did not know anything about my mother's title or interest in this seven-
20 acre tract until after the schedules had been made out and filed, after which time Mr. McElroy had been down to the *the* house and had talked to my mother about it, when she talked the matter over with me. I knew nothing about this at the time we were making out the schedules at Mr. Keenan's office. If I had known it, I certainly would not have returned it at seventeen acres. I would have reserved my mother's interest.

JAS. BRYAR, JR.

Adjourned *sine die*.

THURSDAY, *July* 11, 1878.

Charles W. McCord, Esq., appears and informs the commissioner that the taking of testimony on the part of the plaintiff is closed.

FRIDAY, *June* 13, 1879.

Met pursuant to arrangement between Chas. W. McCord, Esq., attorney for complainant, and W. B. Rogers, Esq., attorney for Thomas Campbell, purchaser at assignee's sale.

Mr. Rogers calls Mrs. Jane Bryar for cross-examination.

Mr. McCord objects to the testimony being taken for cross-examination, for the reason that due notice was given to the respondent at the time of the taking of testimony, where an opportunity was given to cross-examine the witness, but that they failed to appear at that time, that the witness now appears in obedience to the subpœna of the respondents, and is their witness.

Mrs. JANE BRYAR, on cross-examination, says:

I think my brother Samuel McElroy paid me four or five hundred dollars on account of that note. He paid me that sum at the time he gave me the note, when the property was divided. This was not paid on account of the note. At the time of the partition my brother Samuel owed me about $2,500.00. As an evidence of that indebtedness he gave me that note. It was—the note was for $1,576.00 and some cents, I guess. Besides this he gave me
21 four or five hundred dollars in cash. I got nothing to show for the difference between what he owed me ($2,500.00) and the note and cash. He gave me this note two years after the partition. I had nothing to show for my indebtedness in the meantime. At the time there was no settlement—he just gave me the money and the note. He fixed the amount of the note.

Q. Why did you not, at the time you received the note from your brother, require the payment of the balance due you, with the interest thereon?

A. I don't remember why I did it. He gave me the note.

When he gave me the note and money, I gave him a receipt for the money. I gave him no receipt for the note. There wasn't any time specified for the payment of the note.

Eliza B. McElroy is my sister. When I got the note I kept it in the trunk. I kept it there 11 years. I saw Eliza B. McElroy in the meantime. She paid one year's interest, I think. It was the first year's interest that she paid. She wasn't able to pay any more on the note. During this time she had a share in my father's estate—the same interest therein that I had. She never gave me anything at all for that note. During that time my brother Samuel B. McElroy never gave me anything—cash or collaterals—on account of that note. My sister, during this time, did not promise to pay me anything on that note, nor did my brother promise to pay anything. My sister often said she would like to pay it if she could. I had no conversation during the eleven years with my brother Samuel on the subject. At that time my brother Samuel's financial condition was very good.

Adjourned until Saturday, the 14th instant, at 10.30 a. m.

22 SATURDAY, *June* 14, 1879.

Met pursuant to adjournment.

Present: C. W. McCord, Esq., and W. B. Rodgers, Esq.

Continuation of Mrs. BRYAR'S testimony:

My brother Samuel McElroy, first made the proposition about the sale of that interest in the seven-acre tract. No one was present but ourselves. I did not know that he had spoken to my husband about it before. He asked me if I was willing to give the note for that interest, that he considered he was the indorser and that it was his duty to see it paid. It was worth at that time, I should think, two or three thousand dollars per acre—more at least than it is now. The amount of the note at that time was, I think, about $2,500. I gave him an answer at that time—that I was willing to give it. I consulted nobody. I took, I think, about a week or so to deliberate upon it.

Q. I asked you, Mrs. Bryar, if you gave him an answer at the time. You said you did. You now say you took a week or so to deliberate. How is that?

A. I only seen him a short time before the transfer was made. Then I gave him an answer. It was the first time I saw him.

I don't think I took a week to deliberate. I only saw him a short time before. I told him I was willing to give that much—the note for the property. This conversation wasn't very long, about an hour. I have given you all that was said during that hour. There wasn't much said. This conversation was at our own house, in the

afternoon, if I remember. My husband was not at home at the time.

I can't remember when I first told any one of this transaction with my brother. I think I first told my sister.

Q. When did you first tell your sister of this arrangement?

A. I think that day.

23 My sister was living with us at that time. She was not present at the conversation between my brother and myself.

I don't recollect of telling any one else.

Q. Did you tell your husband?

The commissioner having understood the witness to answer the last question "No" before he had time to record the same, asks her now if he understood her correctly. She says she believes she did answer the question "No."

Question read to the witness.

A. I did at the time that I gave him the note.

I gave him the note, I think, a few days after we made the arrangement. It was the first that Mr. Bryar knew of the matter. I told Mr. Bryar I was going to give that note for the property. That was all I told him. I don't remember what he said. I suppose he said something, but I don't remember what. There was nothing said about arranging about getting the deed. There was nothing said to Mr. Bryar about what property was to be got. I can't remember when I next spoke to Mr. Bryar about the matter. Can't remember what time it was. I can't remember whether it was a week or a month. It might have been more than a month or a year, I don't remember. I haven't the faintest recollection when I first mentioned the matter to Mr. Bryar after I gave him the note. I can't remember what the first conversation with Mr. Bryar was after giving the note. I remember a conversation about the deed, but don't remember what it was.

Q. How does it come, Mrs. Bryar, that you remember the conversation about the deed, when you don't remember what it was?

A. Well, I can't remember.

The commissioner here asks the witness if that is all her answer, and she says:

24 I remember of asking Mr. Bryar some time before going into bankruptcy, a year or two, about the deed. At the time I asked him about the deed, I asked him if the deed was made in my name and all right. I refer now to the conversation about a year or two before he went into bankruptcy, about the times he went into the lumber business. He was about going into the lumber business then. I don't remember why I asked him then. I asked him I thought——

Q. Please finish your sentence.

A. I can't remember what I was going to say. I don't know of any reason for asking Mr. Bryar at that time about this deed. I think that was the first time I asked him. He at that time said the deed was made in his name. I then asked him if he would have it made right, or made in my name. He said there's no danger of

me (the witness continued) losing it, it's all right. He said nothing more. I said nothing more. I can't remember that I ever spoke to him again on the question. My husband paid the taxes on this property. I do not know Mr. McClintock or Mr. James, who have a mortgage on this property. I have seen Mr. James but not Mr. McClintock, I don't know him at all. I have seen Mr. James at our house a few times. I can't remember the time I first saw Mr. James at our house. He lived near us, I can't remember when I first saw him; I don't know what his business at our house was.

Q. Don't you know Mrs. Bryar, that at the time Mr. Bryar went into the lumber business, there were mortgages against this property given by him?

(Objected to as leading.)

A. No, sir. I did not ascertain that fact until he went into bankruptcy.

Q. When did you first ascertain that Mr. Bryar was in debt?

A. After he went into bankruptcy, I knew then he was in debt.

(Counsel repeats the question and requests an answer.)

25 A. Some time after he went into bankruptcy. That was the first that I knew he was in debt. I can't remember how long—a few days after—I didn't then get an idea of how much he was in debt. I thought when he went into bankruptcy he was in debt. He did not tell me when he went into bankruptcy; he never told me anything, I never asked him. When he went into the lumber business he purchased the mill, I think—the planing mill—it was in East Liberty.

Q. From whom did Mr. Bryar buy this mill?

A. Well, I can't tell. I never heard. Mr. Bryar never told me. I do not know what he paid for it; I do not know where he got the money to pay for it.

Cross-examination by Mr. McCORD:

I have testified that my brother Samuel gave me four or five hundred dollars and this note.

Q. I now ask you if you agreed at that time to take this cash and this note in full of your claim against him for your interest in your father's estate?

(Objected to as leading—the question should be, "How did you take it?")

A. Yes.

Q. Was that the reason why you did not require your brother to pay you the difference or give you something to show for it?

(Objected to as leading.)

A. Yes, sir.

Q. Was the amount of that note not fixed in the settlement between your brother and sister, Eliza, and offered to you as the paper of your sister, Eliza?

(Objected to as leading and incompetent.)

A. Yes, sir.

The note was given in '52. In '63, eleven years after, this arrangement was made when I gave up the note.

Q. Who did the business for you in handing over that note and getting the deed, if you remember?

A. I can't tell. I sent the note to my brother by my husband.

26 Q. Was that in pursuance with your agreement with your brother?

A. Yes, sir.

Redirect by Mr. RODGERS:

Q. You said, Mrs. Bryar, in answer to a question I asked you' that your husband went into the lumber business—how do you know he went into the lumber business?

A. Well, I heard him speak about it. He was saying something to me about it. He said something to me about purchasing a mill. He said he thought he would go into that business. Don't remember anything more. He said it was that mill, near the railroad, at East Liberty. I believe that was the mill that he afterwards took possession of. I don't remember how long that was before he took possession of it. I don't know who it belonged to.

JANE BRYAR.

Adjourned till Monday next at 1 p. m.

MONDAY, *June* 16, 1879.

Met pursuant to adjournment.

Present: Chas. W. McCord, Esq., and W. B. Rodgers, Esq.

Mr. Rodgers calls JAMES BRYAR, who being sworn says:

I am the husband of Mrs. Jane Bryar. Robert Bryar is a nephew of mine. He lives here in the city.

Q. After the conveyance of the seven-acre piece to you and S. B. McElroy, did you enter into the possession of it?

A. No, sir, not at that time, there was a tenant on the place at the time. I cannot tell exactly what time I went into possession of it. I cannot tell exactly the time. It was probably a year after. There was a tenant on it. At the time we went into possession of it, it wasn't improved much. The improvements were bad. The fences were out of repair. There was an old dwelling and

27 barn on it. I improved the property. The first improvement, I think that I made was the fences. The next was in the fall of '56 or spring of '57 I made a contract for building a house, a two-story brick. It cost, I think—the contract was $2,675. After that we built a coal-house and a wash-house; the same carpenter did the work. There was no contract for it. Don't know what it cost. Made no other—yes, before we begun the house we dug a well and cistern. There were no other improvements at that time. Made no other improvements. About the first thing before

we built the house, we put out about one hundred apple trees. These things were all paid for with my own money.

Q. After March, 1863, what improvements, if any, did you put upon this property?

A. I am not able to answer that. We built one stable, but do not know whether it was before or after that. Oh, yes, we put a two-story wing to the house after March '63—a dining-room and two small rooms above. Don't recollect the year; think it was after '63.

That cost, well, it was either $1,100 or $1,175, but don't recollect just which sum.

I know Mr. James, I executed a mortgage on this property to Mr. James. It was the first week, perhaps, of Sept. '74. The mortgage called for $5,000. Mr. McClintock and Mr. James went in together and took the whole mortgage, I got the money.

Q. Did you execute another mortgage on this, together with some other property for $2,500.00?

A. Yes, sir.

I don't think I had, at that time, a conversation with Mr. Robert Arthurs in regard to the mortgage. Had no other mortgages on the property—didn't know of any. I had no conversation with Mr. Arthurs in which I told him that the property belonged to me. Had no conversation with Mr. Patrick about the mortgage, and did not tell him the property belonged to me.

28 Q. How did the seven acres come to be included in the Patrick mortgage?

A. The mortgage just covered the property—the seven acres and improvements. I think that is all the mortgage called for.

Q. How did you come to give this mortgage upon the seven acres?

A. I wanted the money at that time to pay off some claims upon which suit had been brought against me.

Mr. Keenan drew up the mortgage, I think, for me. I suppose I gave him the description. I think Mr. Keenan wrote the McClintock & James mortgage, and I suppose I gave him the description, too.

I paid for the wing put in the house. I paid the taxes all along on the seven-acre piece till '76. McElroy never took possession of it—the seven-acre piece. I paid him no rents and gave him no profits out of this property while he held the undivided one-half. I don't know what the taxes were. They were levied on the whole piece—eleven acres and seven acres. I recollect one year they were very heavy, amounting to $60 per acre.

I do not know who wrote the deed for McElroy's half. John Mellon was my counsel, but I do not know whether he wrote it or not. I think I put it on record. It came into my possession after it was recorded, and remained in my possession until my assignee in bankruptcy got it.

I know Thomas Campbell. Had dealings with him—trading for a planing mill. I didn't make the bargain. I think James L. Ferson made it. Mr. Ferson was Mr. Campbell's partner. He was also my partner for about—from September to May, I think. He

had been Mr. Campbell's partner, and when I got the mill he (Mr. Ferson) still retained what interest, if any, that he had had in ti.

From '52 to '63 Mr. Samuel B. McElroy was in the wholesale dry goods business. I was endorser for him, but it was after '52—after old Mr. Knox died—yes, after '63.

29 I was in the liquor business till I went into the lumber business—the wholesale liquor business.

Down to '74 my financial standing was very good. I did not begin to get embarrassed till after I went into the lumber business. It was after I went into the lumber business that I made this loan from McClintock & James. It was before I borrowed this money from McClintock & James to pay Mr. Campbell.

Adjourned till Wednesday next at 9 a. m.

Deed handed witness and he is asked to state what it is.

A. That is the deed for S. B. McElroy's interest.

Deed presented, identified by the commissioner and marked Exhibit A, and offered in evidence.

Paper presented, identified by the commissioner, marked Exhibit B, and offered in evidence.

Q. What is Exhibit B?

A. It is the draft of the place—the whole tract. I don't know the engineer or who got this draft made.

I do not remember of giving to Thomas Campbell, about the 7th of December, '75, this draft (Ex. B) and that deed (Ex. A) for the purpose of procuring a mortgage at three years for $25,000 on the seven acres and the eleven acres.

The first that was ever thought of making a mortgage was about February, 1876, and it was given to W. W. Patrick, who thought he could get the money from a Philadelphia party. That first mortgage was returned. The party wanted the form used in Philadelphia, and it was then next made over to W. W. Patrick—the second mortgage. He failed—couldn't get the money. Either Mr. Robert Arthurs or Halsey Williams told me that he thought he could get the money from an insurance company at Chicago. I met Mr. Arthurs on the corner of Liberty and St. Clair St., and he told me to have Mr. Patrick transfer the mortgage to Mr. Geo. I. Whitney, as they—national banks—weren't allowed to take

30 mortgages, or something to that effect. Don't recollect of a mortgage being prepared by Thomas Campbell's attorney.

I never seen this plan (Exhibit B) before. This is the first time I ever heard of it. There was an old plan made by Patterson and this may have been made from it. I never heard of I. H. Harlow before.

Cross examination:

We moved on the property in September 5th, I think. We were living on the property at the time the deed was made by McElroy. We were living in the new house mentioned as being built by me

prior to the time the deed was made. At the time I built that house and made the other improvements spoken of, McElroy and I were holding the property as tenants in common. Never had any conversation with McElroy while building and making the improvements concerning the improvements of the property. Never had any understanding with McElroy about the improvements.

Q. What were you going to say that he told you?

Objected to as incompetent.

A. I was going to say he told me at one time that I might go on and improve as he thought he would not move out there onto the place.

He told me nothing at all about the improvements that I can recollect of.

Q. Mr. Bryar, at the time Mrs. Bryar gave you this note for the purpose of taking it to McElroy to have the deed made, did she give you any instructions as to the business?

Objected to as leading, incompetent, and not cross-examination.

A. Nothing more than she told me to take it in to "Sam." and he would give me the deed.

31 Q. Did you pay anything for this interest of which this is the deed?

Objected to as not cross-examination.

A. Nothing.

Q. Was that deed made in your name by your request?

A. No, sir. I know nothing about the deed other than I took the note and received the deed.

I do not know who made out the deed. It was McElroy who procured it to be made. If I had got it made I would have got it made by Mr. Mellon, and it is not in his handwriting.

Q. Who did pay for this property?

Objected to as not cross-examination.

A. My wife paid for it by giving a note which she held drawn by her sister and endorsed by her brother, S. B. McElroy. I never seen that note, not more than once, if I seen it at all, before the time she gave it to me to carry to McElroy.

I got the deed, I think, perhaps, the same day that I brought in the note. I put it in the safe; I don't think it was taken to the recorder's office at the time.

I had the deed in my possession all the time except when it was at the recorder's office being recorded. I retained possession of it till the time I handed it over to my assignee. I kept it in my safe in the office at the store.

The McClintock and James mortgage was the first I put on this seven acres.

Q. Did you consult Mrs. Bryar about putting that mortgage upon the seven-acre piece of property, or did she have any knowledge what you were going to do?

Objected to as not cross-examination.

A. No, sir, she had no knowledge whatever of it—knew nothing about it.

32 I got that money to pay Mr. Campbell for the planing mill. Mrs. Bryar had no interest in it—the mill. She reaped no benefit from that property—that loan.

Never got a cent on the $25,000 mortgage. I think the negotiation for that mortgage failed.

Q. Was Mrs. Bryar consulted about that mortgage?

Objected to as last above.

A. No, sir, she knew nothing about the mortgages. She was opposed to mortgages on the place. She found out about it afterwards, but how, I don't know.

Q. Did Mrs. Bryar ever ask you to have that matter fixed—that is, put in her name?

Objected to as not proper cross-examination.

A. Yes, sir; several times she was at me to make a deed over to her for her interest in it. Just after I went into this planing mill she began to get uneasy about it, and asked me to make a deed to her.

Q. At that time had she any knowledge of this mortgage?

Same objection as last also.

A. No, sir; no knowledge of the McClintock and James mortgage, and not for a long time after. I never wanted her to know anything about them, as she was opposed to them.

Mrs. Bryar and myself continued in possession of this property from the time it was deeded to us till we were forcibly ejected therefrom.

Redirect examination:

Q. How were you ejected from the property?

A. Well, there was an order from the court for us to give it up. I was not at home. Mr. Campbell came out with the order and read it to the boys, I think. We didn't give up then. He sent out a constable to make a levy for taxes. Mr. Arthurs hadn't paid the

33 taxes for '77. Then we came in, I think to Mr. McCord, who wrote a petition to the court for a restraining order. They kept levying, adjourning the sale, and putting on watchmen, then taking them off. I came in and offered to pay $75.00 on account of taxes, which the collector—the deputy—the collector not being in—refused to take. I thought it was better to try to save our furniture, and I rented a house and we moved, I think that same evening. I saw they were determined to force us out of possession of our property. There was no watchman there the day I went out.

I cannot say the first time I saw this note. It was when my wife was looking over some papers in her trunk. Before the day on which my wife gave me the note, I had heard of the trade being

made. I suppose I heard it from the folks at home—from my wife perhaps. I don't know anywhere else I could have heard it. I heard that they had made a trade. McElroy had been at me several times to have it, the trade, made. He sent other parties to me about it. I wouldn't consent, wouldn't have anything to do with them. I thought he wanted the best of the trade. My wife, when she gave it to me, just told me to take it to McElroy and get the deed. It was the first time I had it in my possession. Had I had it, I would likely have had it collected before that time. When I got it, I took it and brought it to McElroy. I think he came to the store with the deed and gave it to me. It was the same day I think, and I think that was all that passed between us. At the time he brought me the deed I handed him over the note I think. I didn't recollect whether I read over the deed at the time or not. I may have looked at it to see if it was signed by McElroy and wife, but don't know that I read it over. I made no calculation at the time to see what was due on the note. I couldn't even tell you the amount of the note. I never saw it more than once, if at all, during the whole time she had it. I do not know whether or not I noticed the consideration in that deed. I noticed, perhaps, to whom the deed
34 was made. I didn't think McElroy remained long enough with me to have me say anything about it. Said nothing to my wife about it other than that evening when I went home, my wife asked me, I think, if the deed was made in her name, and I answered "O yes, it is all right." I think that was all that passed. That part of it was not true (I never gave any directions to have the deed made in my name, and knew nothing about it till I got it.) I told my wife that, as far as I knew, to please her. I do not recollect when she next spoke to me about it. I do not know how long after. I can't fix any time. I suppose she spoke to me about it both before and after I went into bankruptcy. I do not recollect what she said to me about it. I told her that I thought after paying everything we would have enough left. At this time she knew the deed was in my name. She knew it before—perhaps before I went into bankruptcy. She may have known from my eldest boy whom I blamed for keeping her posted. His name was James Bryar, Jr., I do not know that he examined the records.

JAS. BRYAR.

Adjourned till Friday next at 9.30 a. m.

FRIDAY, *June* 20, 1879.

Met pursuant to adjournment.

Present: Wm. B. Rodgers and Chas. W. McCord, Esq.

THOMAS CAMPBELL being called, sworn and examined, says:

I am purchaser of the "seven acres" at assignee's sale, and have received a deed for it.

I was a creditor of Jas. Bryar. The indebtedness was for a planing mill and for lumber. The sale of the mill was made the latter part of September or the first of October, 1874. At that time, the 1st of October, 1874, I took James Bryar's notes, as follows: One note for $9,993.53, October 1, 1874, at 5 months. Same date, October 1, 1874,

for $8,257.65 at 8 months. Same date, October 1, 1874, for $8,466.74, at 12 months. These were notes given. When the first one
35 came due there was $5,000 paid on the first note. The second and part of the first note—the balance—were renewed. When the second note and renewal of the balance of the first note became due they were both renewed. The 12-month note—there was never anything paid on it. The balance of the first note and the second with some interest, aggregated $13,826.74. One of those notes was paid—$6,913.37. I did not at the time it came due, bring suit but did some time after. I brought suits on two notes—one against Bryar and Henry and another against James Bryar, who was a member of the firm of Bryar and Henry. I obtained judgment. I never received anything on those judgments from Bryar and Henry, nor James Bryar. Before I took this paper I did not have any conversation with Mr. Bryar as to the property he owned. I examined the records—had them examined by my attorney. It was reported to me that the seven acres was in his name—that he owned the property. Concluded then that the man was perfectly good for the property I sold. I made no sale till I had the record examined as to the standing of James Bryar.

Exhibits "A" and "B" handed witness, who says:

I seen this and this plot. I saw them first some time in 1875. Saw them in James Bryar's hands. He gave me those papers. He gave them to me to make a mortgage for $25,000. I offered to take a mortgage on this property for that amount. The mortgage was made and taken to James Bryar by me. I wanted this mortgage to secure my claim and pay off a mortgage that was on the property, and gave him some money. He wanted more money than I was willing to give. He didn't sign the mortgage.

At the time of taking of James Bryar's paper I had no knowledge or intimation of Mrs. Bryar's claim to this "seven acres." I hadn't any at the time of obtaining judgment—in fact not until after the bankruptcy and after the bill was filed.

36 Cross-examination:

At the time I took this paper I would not have considered James Bryar worth it had he only owned the eleven acres without the seven-acre tract.

The sale of the mill was not exactly made to Bryar. The deed was made to James L. Ferson. Bryar & Ferson were going together. At the time of making the sale Ferson had an interest in the mill, and I sold to Ferson with the understanding that Bryar was going into partnership with him. At the time of making the sale I had a two-thirds interest in the mill. I——

Q. What did you sell your interest in that mill for—how much?

A. There was a note I held against another party. I disremember the exact amount. I traded—rather sold it—gave it to Ferson. Ferson bought out another party in the mill—Samuel Brown, I think. I held this note I am speaking of against Samuel Brown's father. Ferson bought out Samuel Brown's interest in the mill.

This note of Samuel Brown's father, that I gave to Ferson—Ferson had that much less to pay Brown for his interest in the mill—and that amount was added to the amount that came to me. The reason of that transaction was, I considered Bryar better than Brown for that amount. The exact amount coming to me at that time, when I made the settlement, I can't tell. I haven't got the "figures." Don't recollect the amount of the Brown note. There was a small book account—my claim against the old firm—which was not included in those notes, by request of Ferson—some three or four hundred dollars—afterwards settled by Ferson—by Ferson & Co. The amount of Brown's note was included in the Bryar note—Bryar & Ferson note.

The whole amount that I sold my interest for, as near as I can recollect, was the amount of these notes, the cash mentioned and the small book account spoken of, which was not included in
37 these notes. The Brown note was, I think, in the neighborhood of $2,000, although I cannot state the exact amount. The Bryar note also included the amount of the Brown note.

Q. State as near as you can the amount of the indebtedness of James Bryar to you, at the time the record was examined with a view to the sale—taking his paper?

A. He didn't owe me anything at the time the record was examined.

Q. State as near as you can the indebtedness of James Bryar to you at the time the sale was consummated.

A. I was to receive $26,717.92 in paper and $5,000 in cash, making a total of $31,717.92.

I received the $5,000 in cash. That left $26,717.92 due from Bryar excepting the book account.

It was to ascertain whether Bryar was worth $26,717.92 that I had this examination made. I didn't know how much property it was reported that Bryar had in his name. He had several pieces so said. I don't know it myself. I couldn't tell you who said so. Can't say that my attorney told me. I don't know that I had an examination made of the different pieces. It was on the strength of the examination made as to the "seven" and "eleven" acres that I took the paper—sold my property and took the paper—being the same property—I suppose so, at least, named in Exhibits "A" and "B." I understand that he had some other property. I had this property—18 acres—examined, which, considering his business here in the city, I considered good enough for my claim. I didn't inquire into the nature and extent of the other property that I heard he owned. I heard the rates of real estate out there—heard that Bryar's property was valuable—had heard it rated at 5, 6, 7, 8 thousand dollars per acre—some above that. I suppose I rated it naturally as other people did.

Q. According then to the way you rated that property the "eleven-acre" tract would be worth between $55,000 and $65,000, would it not?

38 A. It might be and it might not be worth half. I didn't know what property was worth out there. I never lived out here.

Over and above that real estate there he had his business in the city.

Q. Considering then the value of the "eleven-acre tract," his business here in the city, and the other property which you heard he owned, did you not consider James Bryar good for $30,000 at that time?

A. He might be and he might not. I considered him better in having the "seven acres."

At the time he offered the mortgage it was to include the seven-acre piece—I mean the $25,000 mortgage—and no other property. The time that he offered this $25,000 mortgage to me was after the notes had become due.

I agreed to take the $25,000 mortgage on the "seven-acre" tract for the purpose of securing the payment of the paper I held against him, to pay off a mortgage already on the property, and give him some cash. I can't tell how much cash. There was interest due on the mortgage already against the property and interest on my notes, which had to be paid. After paying this interest and the other expenses I was to give him the balance in cash. I did not consider that seven-acre tract good security, at that time, for the $25,000 mortgage I thought it better to take something than nothing. That's what I was aiming at. These negotiations as to the mortgage were before I had obtained judgment. I didn't want to sue Bryar at the time. Bryar wanted more money out of the $25,000 mortgage than I was willing to give him, and the negotiations came to an end. I don't know whether Mrs. Bryar knew anything about the negotiations of this $25,000 mortgage or not. About the time Bryar went into bankruptcy, I bought a mortgage against Bryar from the Dollar savings bank. It was for $10,000—the
39 face of the mortgage. There was some interest on it. It was on the eleven-acre tract. I did not issue an execution on this Bryar judgment.

Q. Did you issue on the mortgage bought by the Dollar savings bank, or the bond accompanying the mortgage?

(Objected to as not cross-examination and immaterial.)

A. I think it was issued on at the time I bought it. I stayed the writ, and issued on it again some time after that, and the property was sold by the sheriff, and bought in by my attorney for me. I took title from the sheriff. It included the "eleven" and not the "seven" acre tract. I believe that Bryar, at the time of the $25,000 mortgage was spoken of, told me he owned the seven-acre tract. I did not get that impression of that from the deed which he gave me. When the mortgage was made out I asked Mr. Rodgers, the attorney, if it was necessary for Mrs. Bryar to sign the mortgage. He asked me if the property was Bryar's. I answered "Yes." He said then it wasn't. At the time of the negotiation of this mortgage there had been some talk of Mrs. Bryar owning this property—the "seven-acre" tract. Can't say who told me, but some one, I think, told me. I asked Bryar if he owned the property. To the best of my knowledge Bryar told me he owned the property. Be-

fore these notes were given for the mill property, I had no personal knowledge of James Bryar further than the examination of his property, and he did not talk to me prior to this time that he owned the seven-acre tract.

Redirect examination:

When he was broke up—James Bryar—it was talked some that Mrs. Bryar owned this "seven-acre" tract. That was what I referred to in my cross-examination. Bryar at this time was broke up—at the time of these rumors. This was some months before he went into bankruptcy.

THOS. CAMPBELL.

Mr. Rodgers offers the record of the judgments against James Bryar at No. 951 and 953, March term, 1875, in the court of
40 common pleas No. 1, Allegheny county, the same being attached to the register's report on *leins*, filed May 8th, 1879, in the United States district court, as No. 2742, in bankruptcy.

By consent THOMAS CAMPBELL, recalled by Mr. McCord, and being examined, says:

The notes spoken of were drawn to the order of James L. Ferson, and indorsed by Ferson. I refer to the original notes. Ferson was on one of the renewals of the original notes. When the second note fell due and the renewal of the balance of the first note—they were put in two renewal notes signed by Bryar and Henry.

THOS. CAMPBELL.

Mr. Rodgers offers the record of the case of James Bryar at No. 2742 in bankruptcy, in the district court of the United States for the western district of Pennsylvania.

Testimony closed.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, S. C. McCandless, special commissioner of the district court of the United States for the western district of Pennsylvania, do hereby certify that the foregoing are the proofs for final hearing in the said case, taken and reduced to writing by Wm. T. Lindsey under my direction; and I do further certify that I am not counsel or attorney for either of the parties in said proof and caption named, nor in any way interested in the event of the cause named in said caption.

Witness my hand this twenty-first day of June, A. D. 1879.

S. C. McCANDLESS,
Special Commissioner.

Fees $21.15.

41 *Decree.*

This cause came on to be heard on the pleadings and evidence, and was argued by counsel for defendants, as well as complainants, and thereupon and upon consideration thereof, the court doth ad-

judge and declare Jane Bryar to be the equitable owner of the land in suit, and that Thomas Campbell received a conveyance thereof and does now hold the same with notice of and subject to the rights of Jane Bryar therein, and it is ordered and decreed that the said Thomas Campbell do by good and sufficient deed or deeds convey to Jane Bryar or to whom she shall appoint the one undivided half part of that tract of land situate in the 21st ward of the city of Pittsburgh, bounded and described as follows: Beginning at a wild-cherry tree, then north fifteen and three-fourths degrees east (N. 15¾° E.) twenty-nine perches (29 p.) to a post, thence south seventy-seven and one-half degrees east (S. 77½° E.) twenty-five and two-tenths perches to a post (25.2 p.), thence south four degrees west (S. 4° W.) forty-nine and four-tenths perches (49.4 p.) to a post, thence north forty-seven degrees west (N. 47° W.) thirty-nine and three-tenths perches (39.3 p.) to the place of beginning, free from all incumbrances done by him or any person or persons claiming by, from or under him, and do account with the said Jane Bryar for all the rents and profits which the said Campbell has or might without willful default received from said land less a just allowance for taxes and repairs on same, and that each party do pay his or her own costs incurred in this proceeding.

PER CURIAM.

42 *Appeal from Decree.*

To the Honorable William McKennan, judge of the circuit court of the United States for the western district of Pennsylvania:

The petition of Thomas Campbell and Robert Arthurs, assignee, respectfully represents.

That on 26th June, 1879, at above No. and term, a decree was entered by the district court of the United States for the western district of Pennsylvania in favor of the plaintiff for the undivided one-half of seven acres of land in city of Pittsburgh, a conveyance of which was asked by the said plaintiff.

That by said decree great injustice was done to defendants the above petitioners.

Petitioners therefore appeal to your honorable court and ask that the pleadings and evidence in said cause be certified to said court in order that the cause may be heard *de novo*; that said decree may be reversed and that your honor may make such order as you may deem meet.

THOMAS CAMPBELL.
ROBERT ARTHURS, *Assignee.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Thomas Campbell, one of above-named defendants and appellants, being duly sworn saith: that above appeal is not taken for purpose of delay, but because he verily believes that the proceedings sought to be removed *as* illegal.

THOMAS CAMPBELL.

Sworn and subscribed before me this 28th day of June, A. D. 1879.

S. C. McCANDLESS,
U. S. Commissioner.

43 *Agreement as to Testimony.*

It is hereby agreed that upon the argument and hearing in the circuit court of the United States on the appeal of the above-stated case, the original testimony taken by the commissioner and the pleadings and papers making up the record now on file in the district court be used for the purpose of the appeal and the making of an exemplification of district court record is hereby waived. It being understood that plaintiff and appellant do not waive any right they may have to object or accept to the action of the circuit court in allowing said appeal to be perfected.

L. C. BARTON,
Solicitor for Plaintiff.
W. B. RODGERS,
Solicitor for Thos. Campbell, Appellant.

Pittsburgh, March 2, 1896.

UNITED STATES OF AMERICA, }
Western District of Pennsylvania, } *ss:*

I, William T. Lindsey, clerk of the district court of the United States for the western district of Pennsylvania, do hereby certify that the foregoing papers are the original papers in the case of Jane Bryar by her next friend Robert Bryar against James Bryar and Robert Arthurs at No. 17 May term, 1877, assignee's docket on file in my office in the city of Pittsburgh in said district.

Witness my hand and the seal of said court at the city of Pittsburgh in said district this 18th day of June, A. D. 1896.

[SEAL.] WM. T. LINDSEY, *Clerk.*

Motion and Proposed Order Declaring Appeal Deserted.

And now, December, 1895, it appearing to the court that an appeal was duly allowed from the decree of the district court of the United States for the western district of Pennsylvania made the 26th day of June, A. D. 1879, to this court on the 30th day of August, A. D. 1879, and docketed in this court at the above number and term, and it further appearing that said appellants have failed to bring up the record from the said district court, pay the entry costs in this court or to prosecute their appeal to the next term of this court, it is, on motion of L. C. Barton, solicitor for appellee, decreed that said appeal is hereby declared deserted, and the decree of the said district court is hereby affirmed at costs of appellants.

44 *Notice of Motion to Decree Appeal Deserted, etc.*

You will please take notice that I will, on Thursday, January 2, 1886, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, move the court to decree the above appeal deserted and affirm the decree of the district court.

L. C. BARTON,
Attorney for Plaintiff.

To Thomas Campbell, defendant, or Rodgers & Oliver, Esqs., his attorneys.

Pittsburgh, Dec. 20, 1895.

Answer of Thos. Campbell to Above Application.

To the honorable the judges of said court:

The answer of Thomas Campbell to the rule in above case respectfully represents:

That he became the purchaser of the land described in the proceedings in this case, by purchase at assignee's sale, and was the real party in interest in this appeal. The appeal in this case has not been prosecuted for reasons stated below, namely: After this appeal was taken, through his attorney he purchased a mortgage made by James Bryar to Edward R. James, dated 2d October, 1874, and recorded in Allegheny county, in Mortgage Book, volume 161, page 640, which said mortgage covered the seven acres of land referred to in these proceedings, and upon which mortgage a *lev. fa.* was issued at No. 277 September term, 1879, and the property sold to William B. Rodgers, his attorney, who afterwards conveyed the said land to affiant. By virtue of said *lev. fa.* the affiant claimed to become the owner of the whole of said land freed and discharged from any claim by the petitioner in this case. The affiant about that time went into possession of the said land and at No. 293 March term, 1880, common pleas No. 1, of Allegheny county, the pe-
45 titioner in this case, with her husband, brought an action in ejectment against the affiant's said attorney and affiant's tenant to recover possession of the undivided one-half of said land, and being the same one-half referred to in this proceeding, and claimed to belong to petitioner. The defense in that case was based upon the title of affiant under said sheriff's sale. Upon the trial of the case it was admitted that the money with which said mortgage was purchased was that of affiant, and the plaintiff in that case offered in evidence the record in the case now before this court. Under instructions of the court a verdict was rendered in favor of the defendants and judgment entered thereon and a writ of error taken to the supreme court of Pennsylvania, and judgment affirmed in an opinion filed 14th November, 1881, and reported in 30 Pittsburgh Legal Journal, page 12.

Affiant believes that the result of the case above referred to ob-

viated any necessity for any further proceedings in this court, and ever since the determination of that case, he and his vendees have been in undisputed possession of said land. Affiant for the above reasons did not prosecute the appeal, but if it seems necessary to the court that he should do so he asks the privilege of proceeding and offering testimony in support of the facts as stated in this answer.

THOMAS CAMPBELL.

ALLEGHENY COUNTY, *ss:*

Thomas Campbell, above-named affiant, being duly sworn, says that the facts set forth in the foregoing answer are true and correct.

THOMAS CAMPBELL.

Sworn and subscribed to before me this 31st day of Dec. 1895.

J. RODGERS McCREERY,
Notary Public.

46 *Order of Court.*

And now, 28th January, 1896, on due consideration it is ordered that the motion to dismiss the appeal be denied and it is further ordered that the appellant have leave to perfect the appeal and to take further testimony.

BY THE COURT.

Order Substituting Plaintiffs.

And now January 27th, 1896, the death of Jane Bryar plaintiff and appellee in the within-stated case being suggested, on motion, — is ordered that James Bryar, Jr., Emma S. Bryar, Samuel B. Bryar, Edward S. Bryar, Jennie H. Bryar, Hattie S. Bryar, Susan Bryar heirs-at-law of said Jane Bryar, be substituted as plaintiffs and appellees in said case.

BY THE COURT.

Petition to Revoke Order of Jan. 28, 1896.

To the honorable the judges of said court:

The petition of Emma S. Bryar, Samuel B. Bryar, Edward Bryar, Hattie Bryar, Jennie Bryar, Susan Bryar and James Bryar, Jr., respectfully represents:

That they are the sole heirs-at-law of Jane Bryar, said *said* plaintiff who died August 28, 1890.

That on the 28th day of January, 1896, your honorable court made an order allowing Thomas Campbell, one of said defendants, to take additional testimony upon the appeal in the above-stated case. Your petitioners aver that they have not had their day in court to which they are legally entitled to be heard before the making of said order, or was a rule granted to show cause why said order should not be made.

Your petitioners further aver that the paper presented to the

court by the attorney of said Thos. Campbell, alleging to be
47 our answer filed to some rule never granted by your honorable court misleads the court. The testimony proposed to be taken by appellees is not after-discovered evidence or such as they were not cognizant of at the time of closing their testimony in the court below but the facts intended to be proven happened long prior to the closing of the testimony in the court below. In this case Thomas Campbell became a party defendant upon his own motion upon the 15th day of August, 1878, and that the mortgage upon which Campbell claims title in said alleged answer was assigned to said Campbell through William B. Rodgers, Esq., his attorney and agent upon the 7th day of June, 1878, and before Campbell became a party defendant in this case and that upon the 30th day of March, A. D. 1878, *scire facias* on said mortgage was issued to No. 204, June term, 1878, upon which judgment was obtained April 12th, 1878, and on the same a *scire facias* was issued on the 15th day of April, 1878, to No. 195, June term, 1878, which said writ was on the 3rd day of June, 1878, stayed costs paid by W. B. Rodgers, Esq., and that on the 15th day of August, 1879, an alias *levari facias* was issued to No. 277 September term, 1879, all the above writs being in the court of common pleas No. 1, of Allegheny county, Pa., upon which said writ the property described in said mortgage was sold on the 6th day of September, 1879, to W. B. Rodgers, Esq., agent and attorney for said Thos. Campbell, and a deed was duly acknowledged by Thos. H. Hunter, Esq., sheriff of said county, on the 20th September, 1879, and delivered to said Rodgers.

The testimony before S. C. McCandless, Esq., commissioner in the court below was closed June 21st, 1879, and the decree made June 26th, 1879.

Your petitioners therefore avering that said testimony is not after-discovered evidence but such as appellees were cognizant of
48 before the closing of their testimony, they ask your honorable court to strike out that portion of said order of June 28th, as allows appellees to take additional testimony and they will ever pray, etc.

EMMA S. BRYAR,
SAMUEL B. BRYAR,
EDWARD BRYAR,
HATTIE BRYAR,
JENNIE BRYAR,
SUSAN BRYAR,
By L. C. BARTON,
Their Attorney.
JAMES BRYAR, JR.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, } *sct:*

James Bryar, Jr., appears, makes oath and says that he is one of the heirs-at-law of Jane Bryar, dec'd, and agent in their behalf for

the other heirs set out in petition attached, and that the matters set forth in said petition are true and correct as he verily believes.

JAS. BRYAR, JR.

Sworn and subscribed before me this 29th day of January, A. D. 1876.

THOS. J. PARKINSON, *Alderman.*

Testimony

Taken before S. C. McCandless, an examiner of the United States circuit court in and for said district, at his office, No. 110 Diamond street.

PITTSBURGH, *February* 29, 1896.

Solicitors present, W. B. Rodgers, Esq., for Thomas Campbell, appellant, and L. C. Barton, Esq., for appellee.

Mr. Rodgers offers the first mortgage of James Bryar to Edward R. James, dated October 7, 1874, recorded in Mortgage Book, vol. 161, page 640.

It is agreed by and between the said solicitors, that the above-mentioned mortgage covers the real estate in controversy in this case.

Mr. Rodgers offers *sci. fa.* on the said mortgage at No. 204,
49 June term, 1878, court of common pleas No. 1, of Allegheny county, Pennsylvania, judgment at No. 12, April term, 1878, and *lev. fa.* on above judgment at No. 195, June term, 1878, and stayed; also *alias lev. fa.* at No. 277 September term 1879 and premises sold to W. B. Rodgers; also sheriff's deed under the above-mentioned *lev. fa.*, Thomas H. Hunter, sheriff, to W. B. Rodgers acknowledged 20th of September, 1879, recorded in Sheriff's Deed Book, vol. 3, page 604.

Mr. Barton objects to all the above testimony as incompetent and irrelevant and as being evidence of which the appellant was cognizant of before the closing of the testimony and the entry of the decree in the district court.

Appellant (by Mr. Rodgers) now offers the record in the court of common pleas of Allegheny county, James Bryar and Jane Bryar his wife, in right of said Jane Bryar, *vs.* John W. Beckett, William B. Rodgers and Thomas Campbell, ejectment, 1st Monday of February, 1880, for the land in controversy in this case, showing May 19, 1881, verdict for the defendants, and June 22, 1881, writ of error to No. 184, October and November term, 1881, supreme court of Pennsylvania, and November 14th, 1881, judgment affirmed, and, in the same connection, offers the opinion of the supreme court reported in 30 Legal Journal, page 12.

Mr. Barton, for appellee, makes the same objection, as before stated to the foregoing.

It is agreed between counsel, that, instead of the exemplification of the above records, there may be used in this case the paper books on both sides in the above-mentioned case and that for the abstracts

of title, the testimony, the points and all matters relevant to this issue, reference may be had to said paper books.

It is also agreed that William B. Rodgers purchased the property referred to in the above proceeding (being the property in dispute) for Thomas Campbell and afterwards made a deed to him.

50 The previous objections made by Mr. Barton, renewed by him to apply to the foregoing testimony.

UNITED STATES OF AMERICA, *Western District of Pennsylvania*, } *ss:*

I, S. C. McCandless, an examiner of the circuit court of the United States for the said district, do hereby certify that the foregoing testimony, in the case stated in the caption thereto, was taken by me at the place and time therein mentioned; and I do further certify that I am not attorney or counsel for any of the parties named in said caption or in any way interested in the event of said suit.

Witness my hand, at Pittsburgh, this 29th day of February, A. D. 1896.

S. C. McCANDLESS, *Examiner.*

Fees, $4.00.

Docket Entries Referred to in Testimony, Page 59.

EDWARD R. JAMES *vs.* JAMES BRYAR, with Notice to Robert Arthurs, His Assignee in Bankruptcy. } No. 204, June Term, 1878.

Sci. fa. surmortgage, recorded in vol. 161, page 640, to first Monday in April, 1878. Affidavit filed for $2,000, interest from April 1st, 1876, and attorneys' commissions served April 1st, 1878. April 12th, 1878, judgment against defendant in default, *sec. reg.* for two thousand, three hundred and fifty-five dollars and eighty-one cents ($2,355.81). And now, August 30, 1879, petition of Jane Bryar, by her next friend Robert Bryar, presented in open court, and rule granted to show cause why said petitioner should not be permitted to pay into court the equal half of said two judgments, debt, interest and costs, and upon so doing have the one-half of said

51 judgment debt, interest and costs marked for the use of the said Jane Bryar, or for such person or persons as she may appoint, to be held for the use and benefit of the said Jane Bryar, returnable Wednesday next (September 3), at 10 o'clock a. m., and in the meantime all proceedings against the interest in said land claimed by Jane Bryar stayed.

BY THE COURT.

September 6, 1879, on argument list, and rule discharged.

THOS. MCCLINTOCK *vs.* JAMES BRYAR, with Notice to Robert Arthurs, His Assignee in Bankruptcy.	No. 205, June Term, 1878.

Scia. fa. surmortgage recorded in vol. 161, page 637, to first Monday in April, 1878. Affidavit filed for $3,000, interest from April 1st, 1876, and attorneys' commissions, served April 1st, 1878. April 12th, 1878, judgment against defendant in default *sec. reg.* for three thousand five hundred and thirty-three dollars and seventy-five cents ($3,533.75). August 30th, 1879, same order of court as entered of this date at No. 204, June term, 1878. September 6th, 1879, on argument list, and rule discharged.

Opinion and Decree.

JANE BRYAR ET AL. *vs.* JAMES BRYAR, Bankrupt; THOMAS Campbell, *et al.*	No. 30, November Term, 1879. In Equity.

Appeal from the district court of the United States for the western district of Pennsylvania.

Coram Acheson and Buffington, JJ.

ACHESON, *Circuit Judge:*

Pending this appeal, in the year 1880, Jane Bryar brought an action of ejectment in the court of common pleas, No. 1, of
52 Allegheny county, Pennsylvania, against Thomas Campbell and others, to recover the land here in controversy. That case was tried before a jury and a verdict rendered in favor of the defendants in the action. Judgment upon the verdict having been entered, Mrs. Bryar sued out a writ of error, and, after argument, the supreme court of Pennsylvania, affirmed the judgment of the court of common pleas. (30 *Pittsburgh Legal Journal*, 12.) In that ejectment Mrs. Bryar set up against Thomas Campbell, as the basis of her right to recover, the same equitable title, which was the foundation of her bill in equity in the United States district court and which her heirs now assert against Campbell in this court. These facts, which have been brought upon the record by proofs and a written stipulation, are decisive, we think, against the heirs of Jane Bryar, the now appellees. Mrs. Bryar elected to have her rights determined in the State courts, and Campbell was compelled to defend in the State forum. Whether or not Campbell could have set up the pendency of the bill here in abatement or bar of the action in the court of common pleas we need not inquire. It is enough that he did not attempt to do so, and the action proceeded in the State courts upon the merits to final judgment. As an adverse decision there against Campbell would have concluded him, so the decision in his favor concluded Mrs. Bryar and her heirs.

The ejectment brought by Mrs. Bryar was upon her equitable title, a procedure allowable in the courts of Pennsylvania, where an equitable ejectment is the full equivalent of and substitute for a bill in equity: and it is well settled that in ejectment upon an equitable title one verdict and judgment are conclusive of the title. *Peterman vs. Huling*, 31 Pa., 432; *Winpenny vs. Winpenny*, 92 Pa., 440. This being an established rule of property in Pennsylvania, an equally conclusive effect is to be given to such a verdict and judgment in the courts of the United States. *Miles vs. Caldwell*, 2 Wall., 36. A complete defence to this bill is therefore shown, and
53 that defence is available here under the present pleadings supplemented by the stipulation of counsel.

Buffington, J., concurs.

Decree.

This cause having come on for final hearing upon the proofs, pleadings and a written stipulation was argued by counsel. And now, February 5th, 1897, upon consideration the decree of the district court is reversed, the costs in that court, however, to be paid by Thomas Campbell, and it is further ordered, adjudged and decreed that the bill of complaint be and the same is dismissed (without costs in this court).

BY THE COURT.

Petition on Appeal.

To the honorable United States circuit court of appeals for the third circuit:

The appeal of the above-named complainant respectfully shows:

The above-named complainants conceiving themselves aggrieved by the order of court made on the 28th day of January, A. D. 1896, as well as by the final decree entered in the above-entitled cause, does hereby appeal therefrom to the United States circuit court of appeals for the third circuit, and it prays that its appeal may be allowed and a citation directed to the above-named defendants, commanding them to appear before the United States circuit court of appeals for the third circuit to do and receive what may pertain to justice to be done in the premises, and that a transcript of the record, proceedings and evidence in said cause duly authenticated may be sent to the United States circuit court of appeals for the third circuit, and that the said order and decree
54 of the circuit court may be modified or such decree made as to the circuit court of appeals shall seem meet.

L. C. BARTON,
Att'y for Complainant.

And now, August 9th, 1896, a rule is granted upon the defendants to show cause why the appeal prayed for should not be allowed as of August 5th, 1897.

M. W. ACHESON,
Circuit Judge.

And now, February 8th, 1897, the above rule is made absolute and the appeal is allowed as of August 5th, 1897, it appearing that this court was not in session on that day and no judge of the court was at chambers. The counsel for the appellants filed his assignments of error with the clerk, and in office of the clerk, on August 5th, 1897, but no judge was within reasonable reach to enable — to perfect the appeal.

M. W. ACHESON,
U. S. Circuit Judge.

Assignments of Error.

And now August 5, 1897, comes appellants by counsel and file the following assignments of error:

1. The court below erred in not allowing the motion of appellee and order thereon of January 28th, 1896, to wit:

"And now December —, 1895, it appearing to the court that an appeal was duly allowed from the decree of the district court of the United States for the western district of Pennsylvania, made the 26th day of June A. D. 1879, to this court on the 30th day of August A. D. 1879, and docketed in this court at the above number and term, and it further appearing that said appellants have failed to bring up the record from the said district court, pay the entry costs in this court or to prosecute their appeal to the next term of this court. It is on motion of L. C. Barton, solicitor for appellee decreed that said appeal is hereby declared deserted, and the decree of the said district court is hereby affirmed at costs of appellants."

55 II. The court below erred in making the order of 28th January, 1896, to wit:

"And now 28th January, 1896, on due consideration it is ordered, that the motion to dismiss the appeal be denied and it is further ordered that the appellant have leave to perfect the appeal and to take further testimony.

BY THE COURT."

III. The court below erred in making the decree of February 5th, 1897, to wit:

"This cause having come on for hearing upon the proofs, pleadings and written stipulation, was argued by counsel. And now February 5, 1897, upon consideration the decree of the district court reversed the costs of that court, however, to be paid by Thomas Campbell. And it is further ordered, adjudged and decreed that the bill of complaint be and the same is dismissed without costs in this court.

BY THE COURT."

L. C. BARTON,
Attorney for Appellants.

Bond.

Know all men by these presents that we, James Bryar, Jr., Emma S., Samuel B., Edward S., Jennie H., Hattie S. and Susan Bryar, principals, Peter McGovern, surety, are held and firmly bound unto Thomas Campbell in the sum of five hundred dollars to be paid to the said Thomas Campbell, his certain attorneys, heirs, executors, administrators or assigns, to which payment well and truly to be made, we do bind ourselves, our heirs, executors and administrators, and every of them jointly and severally, firmly by these presents.

Witness our hands and seals the 5th day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

Now, the condition of the above obligation is such, that
56 whereas, in a certain action pending in the United States circuit court for the third circuit, sitting in the western district of Pennsylvania, as No. 30, November term, 1879, in equity, wherein Jane Bryar, by her next friend, is appellee, and James Bryar *et al.*, appellants, and the principals to this bond having taken an appeal from the decree of said court in said case to the United States circuit court of appeals for the third circuit:

Now, if said appellants shall prosecute their said appeal with effect and pay all costs that may be adjudged against them without any fraud or further delay, then this obligation to be void, otherwise to be and remain in full force and virtue.

JAMES BRYAR, JR. [SEAL.]
EMMA S.,
SAMUEL B.,
EDWARD S.,
JENNIE H.,
HATTIE S., AND
SUSAN BRYAR,
By L. C. BARTON, [SEAL.]
Their Attorney.
PETER McGOVERN. [SEAL.]

Sealed and delivered in the presence of—
THOS. J. PARKINSON.

And now, February 8, 1898, the within bond approved as of August 5th, 1897. See order on back for petition for appeal for reasons for this allowance.

M. W. ACHESON,
U. S. Circuit Judge.

Citation.

UNITED STATES OF AMERICA, }
Western District of Pennsylvania, } *ss:*

To Thomas Campbell, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals, to be holden at Philadelphia,

Penna., on the 9th day of March next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western district of Pennsylvania, wherein James Bryar, Jr., Samuel B. Bryar, Edward Bryar, Hattie Bryar, Jennie Bryar, and Susan Bryar, are appellants and you are appellee, to show cause, if
56½ any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this eighth day of February, A. D. 1898.

M. W. ACHESON,
U. S. Circuit Judge.

Served upon W. B. Rogers, Esq., attorney for Thomas Campbell, February 26th, 1898.

H. D. GAMBLE, *Clerk.*

Certificate.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

In the Circuit Court of the United States for the Western District of Pennsylvania.

JAMES BRYAR ET AL.
vs.
THOMAS CAMPBELL. } No. 30. Nov. Term, 1879.

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled case, so full and entire as the same remains of record and on file in my office.

In testimony whereof, I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 5th day of March, A. D. 1898.

[SEAL.] H. D. GAMBLE, *Clerk.*

57 And afterwards, to wit, on the twelfth day of October, A. D. 1898, this cause being called for argument on the transcript of record from the circuit court of the United States for the western district of Pennsylvania, before Hon. George M. Dallas, circuit judge, and Hon. William Butler, district *and* judge, and Hon. Andrew Kirkpatrick, district judge, and being argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for consideration thereof.

And afterwards, to wit, on the fifth day of December, A. D. 1898, comes the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, renders the following opinion, to wit:

57½ In the United States Circuit Court of Appeals for the Third Circuit.

JAMES BRYAR, JR., ET AL., Heirs of Jane Bryar, Deceased, Appellant-,
vs.
THOMAS CAMPBELL.

Appeal from the circuit court of the United States for the western district of Pennsylvania.

Before Dallas, Butler, and Kirkpatrick, JJ.

BUTLER, *District Judge:*

In January, 1877, James Bryar was declared a bankrupt, and soon thereafter certain land to which he had title was offered for sale by his assignee. His wife, Jane Bryar, thereupon petitioned the district court for an order to restrain the sale, averring that the property was hers, the deed for the same having been made to her husband by mistake. While the application was pending the assignee sold the land to Campbell. Subsequently (June 29, '78) Campbell was brought in as a defendant, and later (June, '79) the petition was amended by inserting a prayer for conveyance of the land by Campbell to the petitioner. Thus the proceeding became substantially a suit between Mrs. Bryar and Campbell for the property in controversy. Subsequently the court adjudged it to her and decreed that Campbell convey accordingly. July 16, '79, the latter appealed to the circuit court. While the appeal was pending the land was sold under a mortgage executed by James Bryar October 2, 1874, and purchased by William Rogers, who conveyed to Campbell. In 1880 Mrs. Bryar brought an action of ejectment against Campbell, and on the trial a verdict was rendered against her and judgment entered accordingly. January 28, 1896, the plaintiff moved the court to dismiss the appeal (for imperfection); which motion the court refused. With these facts appearing on the record the
58 appeal came to a hearing in 1897 and the bill was dismissed. The refusal to strike off the appeal and the dismissal of the bill constitute the errors assigned.

The case is extraordinary; but in any view that can be taken of it the action of the circuit court (in both respects complained of) must be affirmed. Granting that the district court had jurisdiction to enter the decree (which may well be doubted, to say the least), and that the circuit court had authority to do more than reverse and dismiss the bill, for want of such jurisdiction, its refusal of the motion and dismissal of the bill on the merits must be affirmed, because, first, the suit at law must be treated as an abandonment of the proceeding in equity, and, second (if not), the verdict of the jury must be regarded as a conclusive finding of the facts, on which the plaintiff's case rests, against her.

The decree is therefore affirmed.

59 United States Circuit Court of Appeals for the Third Circuit.

JAMES BRYAR, JR., EMMA S. BRYAR, SAMUEL B. BRYAR, EDWARD S. Bryar, Jennie H. Bryar, Hattie S. Bryar, and Susan Bryar, Heirs-at-law of Jane Bryar, Deceased, Appellants,
vs.
THOMAS CAMPBELL.

Appeal from the circuit court of the United States for the western district of Pennsylvania.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the western district of Pennsylvania and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

WM. BUTLER, *J.*

Philadelphia, December 6, 1898.

60 In the United States Circuit Court of Appeals, Third Circuit.

JAMES BRYAR, JR., ET AL., Appellants,
vs.
THOMAS CAMPBELL.

To the honorable the judges of said court:

The appeal of James Bryar, Jr., Emma S. Bryar, Samuel B. Bryar, Edward S. Bryar, Jennie H. Bryar, Hattie S. Bryar, and Susan Bryar, heirs-at-law of Jane Bryar, deceased, respectfully shows—

That above-named complainants, conceiving themselves aggrieved by the order of this court made the 5th day of December, A. D. 1898, does hereby appeal therefrom to the Supreme Court of the United States, and aver that the cause was an action arising under the bankrupt laws of the United States of 1867 and supplements, and that the value of the property in controversy exceeds one thousand dollars, and that said United States circuit court of appeals, third circuit, erred as follows:

1st. In finding as a fact as follows: "Subsequently (June 29, '78) Campbell was brought in as a defendant."

2d. In the first conclusion of law as follows: "First, the suit at law must be treated as an abandonment of the proceeding in equity."

3rd. In the second conclusion of law as follows: "Second (if not), the verdict of the jury must be regarded as a conclusive finding of the facts on which plaintiff's case rests against her."

61 4th. The court erred in affirming motion and order of the circuit court of January 28th, 1896, to wit: "And now, December —, 1895, it appearing to the court that an appeal was duly allowed from the decree of the district court of the United States for the western district of Pennsylvania, made the 26th day of June, A. D. 1879, to this court on the 30th day of August, A. D. 1879, and docketed in this court at the above number and term, and it

further appearing that said appellants have failed to bring up the record from the said district court, pay the entry costs in this court, or to prosecute their appeal to the next term of this court, it is, on motion of L. C. Barton, solicitor for appellee, decreed that said appeal is hereby declared deserted, and the decree of the said district court is hereby affirmed at costs of appellants."

5th. The court erred in affirming circuit court in making order of 28th January, 1896, to wit: "And now, 28th January, 1896, on due consideration, it is ordered that the motion to dismiss the appeal be denied; and it is further ordered that the appellant have leave to perfect the appeal and to take further testimony."

6th. The court erred in affirming decree of the circuit court of February 5th, 1897, to wit: "This cause, having come on for final hearing upon the proofs, pleadings, and written stipulation, was argued by counsel; and now, February 5th, 1897, upon consideration, the decree of the district court — reversed, the costs of that court, however, to be paid by Thomas Campbell; and it is further ordered, adjudged, and decreed that the bill of complaint be, and the same is, dismissed, without costs in this court."

7th. The court erred in not affirming decree of the district
62 court filed June 26th, 1879, to wit: "This cause came on to be heard on the pleadings and evidence, and was argued by counsel for defendants, as well as for complainant; and thereupon and upon consideration thereof the court doth adjudge and declare Jane Bryar to be the equitable owner of the land in suit, and that Thos. Campbell received a conveyance thereof and does now hold the same with notice of and subject to the rights of Jane Bryar therein; and it is ordered and decreed that the said Thos. Campbell do, by good and sufficient deed or deeds, convey to Jane Bryar, or to whom she shall appoint, the one undivided half part of that tract of land, situate in the 21st ward of the city of Pittsburg, bounded and described as follows: Beginning at a wild-cherry tree, thence north fifteen and three-quarters degrees east (N. 15¾ E.) twenty-nine perches (29 p.) to a post; thence south seventy-seven and one-half degrees east (S. 77½ E.) twenty-five and two-tenths perches to a post ($25\frac{2}{10}$ p.); thence south four degrees west (S. 4 W.) forty-nine and four-tenths perches ($49\frac{4}{10}$ p.) to a post; thence north forty-seven degrees west (N. 47 W.) thirty-nine and three-tenth-perches ($39\frac{3}{10}$ p.) to the place of beginning, free from all incumbrances done by him or any person or persons claiming by, from, or under him, and do account with the said Jane Bryar for all the rents and profits which the said Thomas Campbell has or might, without wilful default, have received from said land, less a just allowance for taxes and repairs on same, and that each party do pay his or her own costs incurred in this proceeding."

8th. The court erred in doubting the jurisdiction of the district court as follows: "Granting that the district court had jurisdiction to enter the decree (which may well be doubted, to say the least), and that the circuit court had authority to do more than re-
63 verse and dismiss the bill for want of such jurisdiction."

And they therefore pray that their appeal may be allowed,

and a citation directed to the above-named appellee and defendant, commanding him to appear before the Supreme Court of the United States to do and receive what may pertain to justice to be done in the premises, and that a transcript of the record, proceedings, and evidence in said cause, duly authenticated, may be sent to the Supreme Court of the United States, and that the said order or decree of the said United States circuit court of appeals, third circuit, may be modified or such order or decree made as to the said Supreme Court of the United States shall seem meet.

L. C. BARTON,
Of Solicitor for Appellants.

And now, January 20th, 1899, the within appeal allowed.

GEORGE SHIRAS, JR.,
Associate Justice, Supreme Court of the United States.

(Endorsed:) No. 24. September term, 1898, U. S. circuit court of appeals, third circuit. James Bryar, Jr., *et al.*, appellants, *vs.* Thomas Campbell. Petition on appeal. Edward Campbell, L. C. Barton. Filed January 25th, 1899.

64 In the Supreme Court of the United States.

JAMES BRYAR, JR., ET AL., Appellants,
vs.
THOMAS CAMPBELL.

And now, January 20th, 1899, come appellants, by counsel, and file the following assignments of error to the United States circuit court of appeals, third circuit:

1st. The court erred in finding as a fact as follows: "Subsequently (June 29, '78) Campbell was brought in as a defendant."

2d. The court erred in the first conclusion of law as follows: "First, the suit at law must be treated as an abandonment of the proceeding in equity."

3rd. The court erred in the second conclusion of law as follows: "Second (if not), the verdict of the jury must be regarded as a conclusive finding of the facts, on which plaintiff's case rests, against her."

4th. The court erred in affirming motion and order of the circuit court of January 28th, 1896, to wit: "And now, December —, 1895, it appearing to the court that an appeal was duly allowed from the decree of the district court of the United States for the western district of Pennsylvania made the 26th day of June, A. D. 1897, to this court on the 30th day of August, A. D. 1897, and docketed in this court at the above number and term, and it further appearing that said appellants have failed to bring up the record from the said district court, pay the entry costs in this court, or to prosecute their appeal to the next term of this court, it is, on motion of L. C. Barton, solicitor for appellee, decreed that said appeal is
65 hereby declared deserted and the decree of the said district court is hereby affirmed at costs of appellants."

5th. The court erred in affirming — circuit court in making order of 28th January, 1896, to wit: "And now, 28th January, 1896, on due consideration, it is ordered that the motion to dismiss the appeal be denied; and it is further ordered that the appellant have leave to perfect the appeal and to take further testimony."

6th. The court erred in affirming decree of the circuit court of February 5th, 1897, to wit: "This cause, having come on for final hearing upon the proofs, pleadings, and written stipulation, was argued by counsel; and now, February 5th, 1897, upon consideration, the decree of the district court — reversed; the costs of that court, however, to be paid by Thomas Campbell; and it is further ordered, adjudged, and decreed that the bill of complaint be, and the same is, dismissed without costs in this court."

7th. The court erred in not affirming decree of the district court filed June 26th, 1897, to wit: "This cause came on to be heard on the pleadings and evidence and was argued by counsel for defendants as well as for complainant; and thereupon and upon consideration thereof the court doth adjudge and declare Jane Bryar to be the equitable owner of the land in suit, and that Thos. Campbell received a conveyance thereof and does now hold the same, with notice of and subject to the rights of Jane Bryar therein; and it is ordered and decreed that the said Thos. Campbell do by good and sufficient deed or deeds convey to Jane Bryar or to whom she shall appoint the one undivided half part of that tract of land situate in the 21st ward of the city of Pittsburg, bounded and described as follows: Beginning at a wild-cherry tree, thence north fifteen and three-quarters degrees east (N. $15\frac{3}{4}$ E.) twenty-nine perches
66 (29 p.) to a post; thence south seventy-seven and one-half degrees east (S. $77\frac{1}{2}$ E.) twenty-five and two-tenths perches to a post ($25\frac{2}{10}$ p.); thence south four degrees west (S. 4 W.) forty-nine and four-tenths perches ($49\frac{4}{10}$ p.) to a post; thence north forty-seven degrees west (N. 47 W.) thirty-nine and three tenths perches ($39\frac{3}{10}$ p.) to the place of beginning, free from all incumbrances done by him or any person or persons claiming by, from, or under him, and do account with the said Jane Bryar for all the rents and profits which the said Thomas Campbell has or might without willful default have received from said land, less a just allowance for taxes and repairs on same, and that each party do pay his or her own costs incurred in this proceeding."

8th. The court erred in doubting the jurisdiction of the district court as follows: "Granting that the district court had jurisdiction to enter the decree (which may well be doubted, to say the least), and that the circuit court had authority to do more than reverse and dismiss the bill for want of jurisdiction."

L. C. BARTON,
Of Solicitors for Appellants.

Endorsed: No. —. — term, 1899, Supreme Court of the United States. James Bryar, Jr., *et al.*, appellants, *vs.* Thomas Campbell. Assignments of error. Edward Campbell, L. C. Barton. Filed in circuit court of appeals for the third circuit January 25th, 1899.

67 Know all men by these presents that we, James Bryar, Jr., Edward S. Bryar, Samuel Bryar, Emma S. Bryar, Hattie Bryar, Jennie H. Bryar, and Susan Bryar, as principal-, and Peter McGovern and S. J. McFarren, both of Pittsburgh, Allegheny county, Penna., as sureties, are held and firmly bound unto Thomas Campbell in the full and just sum of five hundred (500) dollars, to be paid to the said Thomas Campbell, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourteenth day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a United States circuit court of appeals, third circuit, in a suit depending in said court between James Bryar, Jr., *et al.*, the principals hereto, as appellants, and Thomas Campbell, as appellee, a decree was rendered against the said James Bryar, Jr., *et al.*, and the said James Bryar, Jr., *et al.* having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Thomas Campbell, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said James Bryar, Jr., *et al.* shall prosecute their appeal to effect
68 and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JAS. BRYAR, JR., [SEAL.]
For Himself and Attorney for Edward S., Samuel B., Emma S., Hattie S., Jennie H., and Susan Bryar.
PETER McGOVERN. [SEAL.]
S. J. McFARREN. [SEAL.]

Sealed and delivered in presence of—

L. C. BARTON, As to all.
H. D. GAMBLE,
As to sureties.

Approved by—

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

UNITED STATES OF AMERICA, }
Western District of Pennsylvania, } *sct:*

Peter McGovern and S. J. McFarren, the sureties on the within bond, appear, make oath, and say that they are each freeholders within the western district of Pennsylvania, and are respectively

worth double the amount of the within bond over and above their just debts and liabilities.

PETER McGOVERN.
S. J. McFARREN.

Sworn and subscribed *coram* this 14th day of January, A. D. 1899.

H. D. GAMBLE,
[SEAL.] *U. S. Commissioner.*

(Endorsed:) No. 24. Sept. term, 1898, U. S. circuit court of appeals, third circuit. James Bryar, Jr., *et al.*, appellants, *vs.* Thos. Campbell. Bond on appeal to U. S. Supreme Court. Edward Campbell, L. C. Barton. Filed January 25, 1899.

69 UNITED STATES OF AMERICA, *ss:*

To Thomas Campbell, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the United States circuit court of appeals for the third circuit, wherein James Bryar, Jr., Emma S. Bryar, Samuel B. Bryar, Edward S. Bryar, Jennie H. Bryar, Hattie S. Bryar, and Susan Bryar, heirs-at-law of Jane Bryar, deceased, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 20th day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

(Endorsed:) No. 24. Sept. term, 1898, U. S. circuit court of appeals, third circuit. James Bryar, Jr., *et al.*, appellants, *v.* Thos. Campbell. Citation. Service of the within citation accepted this 23d day of January, A. D. 1899. W. B. Rodgers, attorney for Thos. Campbell, appellee. Edward Campbell, L. C. Barton. Filed January 25, 1899.

70 UNITED STATES OF AMERICA, *ss:*

I, William H. Merrick, clerk of the United States circuit court of appeals for the third circuit, do hereby certify that the foregoing pages from one to seventy, inclusive, to contain a full, true, complete, and faithful copy of the original transcript of record in the case of James Bryar, Jr., Emma S. Bryar, Samuel B. Bryar, Edward S. Bryar, Jennie H. Bryar, Hattie S. Bryar, and Susan Bryar, heirs-

at-law of Jane Bryar, deceased, appellants, *vs.* Thomas Campbell, appellee, No. 24, September term, 1898, on file and now remaining among the records of the said court in my office.

Seal United States Circuit Court of Appeals, Third Circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this thirty-first day of January, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

Endorsed on cover: File No., 17,317. U. S. C. C. of appeals, 3rd circuit. Term No., 227. James Bryar, Jr., Emma S. Bryar, Samuel B. Bryar, Edward S. Bryar, Jennie H. Bryar, Hattie S. Bryar, and Susan Bryar, heirs-at-law of Jane Bryar, deceased, appellants, *vs.* Thomas Campbell. Filed March 6th, 1899.